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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 8 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-98
Local Competition Provisions in)	[DA 96-1007; IAD 96-175]
The Telecommunications Act of 1996)	
)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
IN RESPONSE TO THE FCC'S JUNE 20, 1996 SUPPLEMENTAL NOTICE

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PAUL RODGERS
General Counsel

CHARLES D. GRAY
Assistant General Counsel

JAMES BRADFORD RAMSAY
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

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Pursuant to the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.415, and 1.419 (1995), the National Association of Regulatory Utility Commissioners ("NARUC") files these comments in response to the "Supplemental Comment Period Designated for Local Competition Proceeding" released June 20, 1996 in the above captioned proceeding.

¹ NARUC is a quasi-governmental nonprofit organization founded in 1889 to, inter alia, improve the quality and effectiveness of public utility regulation. Members include the commissions from all States, the District of Columbia, Puerto Rico, and the Virgin Islands, that regulate, inter alia, intrastate telecommunications services. NARUC also (i) nominates state members to the 47 U.S.C. § 410 mandated Federal-State Joint Boards, (ii) actively represents State interests in FCC dockets that impact state regulatory initiatives, and (iii) collaborates with the FCC Common Carrier Bureau in matters of common interest. [47 C.F.R. § 0.91(c) states the CCB is to "[c]ollaborate with..state [PUCs].. and [NARUC] in...studies of common carrier and related matters."

I. BACKGROUND

In a "late release" on June 20, 1996, the FCC issued a notice inviting comment on a June 17, 1996 released staff model of the telecommunications industry ("IAD Model" or "Model"). The IAD Model allows users to calculate a variety of outputs from nearly 200 specifications. Specifically, the Model allows the user to specify growth rates, pricing trends, demand elasticities and cost relationships to simulate effects in traditional industry segments. A number of the inputs are intrastate. The Model has been included in the record of this proceeding. In an order that issued shortly before the originally established comment date, the FCC extended the time for comment by 7 days. In total, the FCC gave 17 days for interested parties to formulate comments. Also, according to the original notice, no reply comments will be accepted.

II. DISCUSSION

This proceeding is critically important to the States. NARUC and the individual States have devoted considerable resources to assist the FCC efforts, in this proceeding, to implement § 251-2 of the Act in a manner that does not impede, or duplicate, existing State and Federal pro-competitive initiatives, or result in unnecessary litigation. Continuing State-FCC cooperative efforts are necessary to ensure the rapid development of local competition. The incorporation of the Model into the record of this proceeding, and the request for comments, suggests that the FCC may wish to use the model in fulfilling its duties under the Act. Any such use could significantly impact pending State competition initiatives.

NARUC is concerned that the FCC has not provided a sufficient information or opportunity for comment. Specifically, NARUC contends as follows:

- o The truncated comment cycle, and the inadequate information concerning how the FCC may use the IAD Model in the context of this proceeding, deprives interested parties of an opportunity to comment substantively on its merits.
- o The truncated comment cycle, and the inadequate information concerning how the FCC may use it in the context of this proceeding, does not provide the Model with public vetting needed for the Commission to assess its reliability.
- o The results of the FCC's use of the Model should not bind States.

A number of circumstances support NARUC's assertion that the time specified for comment is simply not adequate. For example, some of NARUC's members immediately downloaded the Model when it was posted electronically in a "DOS" format by the FCC, but have been unable to access the file as they operate in a "Windows" environment and have not retained DOS-based applications.

Even those NARUC members that were able to access the Model have not had an adequate time to analyze it. As implicitly acknowledged by the FCC's 50 page limitation on comments, and the notice's description of the model as allowing users to derive "a variety of outputs" from "200 specifications," the IAD Model is complex. Indeed, the Industrial Analysis Division has been working on it for months. However, the notice seeking comment was released only 17 days ago and no opportunity for formal reply comments is provided.

In addition, the June 20, 1996 notice is silent on exactly how, in the context of this proceeding, the FCC intends to use the model and the weight any results will be given - if any.

Given the complexity of the model, the critical lapse in the notice concerning its probable use, and its issuance in a dated format, NARUC respectfully suggests that the abbreviated time for comment does not allow anyone the opportunity to provide meaningful input on the model for the record.

This deficit in the record of this proceeding has two disturbing implications. First, in imposing such a truncated comment cycle with little discussion of the expected use of the model, the FCC runs the risk of legal challenges based upon non-compliance with the adequate notice requirements of the Federal Administrative Procedure Act, 5 U.S.C. § 553.² Second, and of most significance to the Commission from a policy perspective, the truncated comment cycle does not provide the model with the thorough public vetting needed for the Commission to assess its reliability.

² See, *Florida Power & Light Co. v. U.S.*, 846 F.2d 765, cert. denied, 109 S.Ct. 1952 (1989), where the Court notes that a notice must provide both sufficient detail and an adequate time for parties to meaningfully comment.

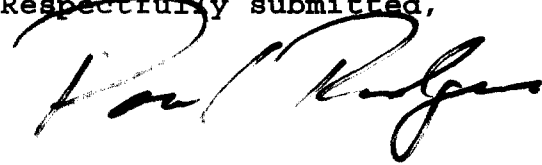
As mentioned, supra, it is not clear exactly how the FCC intends to use the IAD model. Given the obvious importance of all FCC action pursuant to § 251-2, NARUC respectfully suggests that before it can be used, (1) the FCC should provide additional information on how it expects to use the model in the context of this proceeding and (2) the model, and the additional information concerning its proposed use, should be the subject of additional comment and critique.

Without additional information on the FCC's use of the model and an adequate time to examine its construction, it is difficult to provide any direct comment. However, irrespective of the manner in which the FCC ultimately chooses to employ this model, NARUC contends the output should not be binding on the individual States. As we have already noted elsewhere in this proceeding, particularly with regard to the local competition issues implicit in § 251 - a one-size-fits-all policy should be avoided to ensure competition develops expeditiously in all markets, avoid regulatory gridlock, and minimize unnecessary litigation.


III. CONCLUSION

NARUC looks forward to continuing to work with the FCC to develop a national framework that genuinely opens the local market to competition. NARUC respectfully requests the FCC carefully consider the arguments, and act upon the requests, discussed supra.

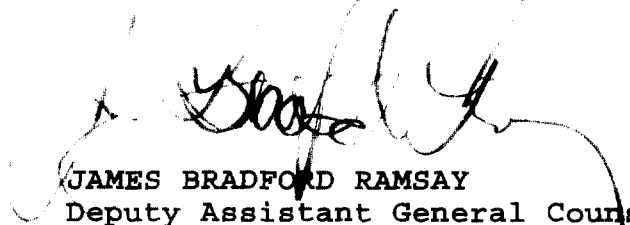
Respectfully submitted,



PAUL RODGERS
General Counsel



CHARLES D. GRAY
Assistant General Counsel



JAMES BRADFORD RAMSAY
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

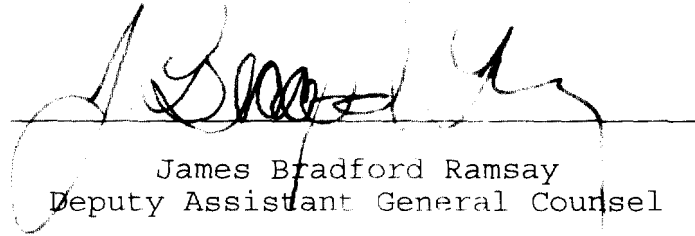
1201 Constitution Avenue
Suite 1102
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

July 8, 1996

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was sent by first class United States mail, postage prepaid, to all parties on the attached Service List.



James Bradford Ramsay
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

July 8, 1996